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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)

Implementation of the Pay Telephone)
Reclassification and Compensation)
Provisions of the Telecommunications)
Act of 1996)

CC Docket No. 96-128
DA 97-2214

OPPOSITION OF THE
AMERICAN PUBLIC COMMUNICATIONS COUNCIL
TO PCIA'S REQUEST FOR STAY

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December 10, 1997

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**OPPOSITION OF THE
AMERICAN PUBLIC COMMUNICATIONS COUNCIL
TO PCIA'S REQUEST FOR STAY**

The American Public Communications Council ("APCC") hereby opposes the request of the Personal Communications Industry Association ("PCIA") for a stay of the Second Report and Order in this proceeding, FCC 97-371, released October 7, 1997, pending judicial review.

APCC concurs in the Opposition of the RBOC/GTE/SNET Coalition to PCIA's Request for Stay, filed December 9, 1997. PCIA argues that the Second Report and Order must be stayed because the ANI digits waiver granted by the Common Carrier Bureau (Order, DA 97-2162 (Com. Car. Bur., October 7, 1997)) allegedly prevents call blocking. As discussed in the Coalition's Opposition, the feasibility of call blocking is a peripheral issue. The validity of the 28.4-cent rate prescribed by the Commission depends on the validity of the Commission's market surrogates and cost analysis. Just as the feasibility of call blocking cannot save an unjustified rate (Illinois Public

Telecommunications Association v. FCC, 117 F.2d 555, 564 (D.C. Cir. 1997)), its alleged infeasibility cannot invalidate a justified rate. In any event, as the Coalition also points out, since blocking is now feasible on at least 60% of payphone calls, interexchange carriers ("IXCs") already have considerably greater leverage to negotiate a lower rate with payphone service providers ("PSPs"), who are not allowed to block calls at all.

In addition, as discussed in the Coalition's Opposition and in APCC's earlier-filed opposition to MCI's stay request, a stay of the Second Report and Order would severely and irreparably harm independent PSPs and disserve the public interest.

Finally, there can be no irreparable harm to PCIA's members from the Second Report and Order. To the extent that PCIA's members are injured at all, it is the IXCs that should be held responsible. Several months before assessing the current surcharges on payphone-originated calls, the IXCs imposed a general rate increase that was allegedly designed to fully recover the costs of the Commission's original 35-cent compensation rate. Now the IXCs are trying to surcharge their payphone-using customers for the full amount of the new 28.4-cent rate -- *on top of* the earlier increase to recover the now-vacated 35-cent rate. PCIA should be directing its complaint at the IXCs, not the Commission's order.

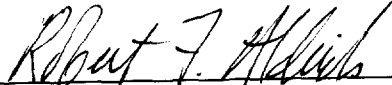
Moreover, the IXCs have claimed they cannot even *track* the allegedly unblockable calls from smart payphones. See, e.g., Letter to John B. Muleta from E.E. Estey, Government Affairs Vice President, AT&T, October 14, 1997. If the IXCs cannot

track these calls, then they cannot bill PCIA's members any payphone surcharges for these calls, and there is no conceivable basis for PCIA's claims of injury.

In short, PCIA's request for stay is utterly without merit, and should not distract the Commission from the important steps that must still be taken to bring these proceedings to a close.

Dated: December 10, 1997

Respectfully submitted,


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CERTIFICATE OF SERVICE

I hereby certify that on December 10, 1997, I caused a copy of the foregoing Motion To File Late, And Opposition Of The American Public Communications Council To PCIA'S Request For Stay to be sent by first class mail, postage prepaid or by hand delivery (*), to the following:

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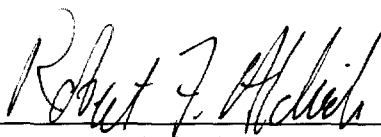
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